

### REMARKS

In the Office Action mailed October 17, 2005, the Claims 15-19, 22-32 and 34 were rejected under 35 U.S.C. § 102(b) based on U.S. Patent No. 5,702,342 to Metzler et al., Claims 1, 2, 6 and 7 were rejected under 35 U.S.C. § 103(a) based on Metzler in view of U.S. Patent No. 5,456,654 to Ball, and Claims 3, 4, 8, 11 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable based on Metzler, et al. in view of Ball and further in view of U.S. Patent No. 6,491,622 to Kasic, et al. Further, Claims 5, 9, 10, 13, 14, 20, 21 and 33 were indicated as being allowable if rewritten in independent form to include the limitations of the claims from which they correspondingly depend. Applicant submits that all pending claims are allowable.

In this regard, independent Claim 1 is directed to an implantable hearing aid transducer mountable to a transducer mounting apparatus, and comprises an actuator, a driver comprising at least one magnet and one coil, and a transducer housing having a portion that is rotatable in three dimensions and supportedly houses at least a portion of one of the magnet and coil of the driver, wherein at least part of the rotatable portion is rotatable within and relative to a cavity of a transducer mounting apparatus, and wherein during three-dimensional rotation of the rotatable portion a center of rotation thereof remains positionally fixed. Applicant submits that the prior art neither discloses nor renders obvious the inventional Claim 1.

For example, Metzler et al. fails to disclose, *inter alia*, an arrangement in which at least a portion of a transducer housing houses at least a portion of a magnet or coil of a driver, wherein at least part of the rotatable portion is rotatable within and relative to a cavity of a transducer mounting apparatus, much less wherein during three-dimensional rotation a center of rotation of the rotatable portion remains positionally fixed. Rather, and a clear contrast to the arrangement of Claim 1 in the present Application, Metzler et al. teaches:

“[A] transducer 62 mounted on [a] first end portion 50 of [a] mounting post 48 [that] extends beyond [a] primary casing 12 ... such that lead 65 of transducer 62 extends into the middle ear.” (Emphasis added) Column 4, lines 41-43.

In this regard, it seems clear that the mounting post 48 of Metzler, et al. should not be considered as part of a “transducer housing” and does not, in any case, house any portion of a magnet or coil of a driver. Further, Applicant submits that Metzler et al. actually teaches away from locating any portion of a magnet or coil of a driver within a rotatable housing portion having at least a part thereof that is rotatable within and relative to a cavity of a transducer mounting apparatus.

Ball fails to disclose, *inter alia*, a transducer housing having any rotatable portion, much less a rotatable portion that includes a part that is rotatable within and relative to a cavity of a transducer mounting apparatus. In fact, Ball is directed to various arrangements in which a transducer 100 comprising a housing 10 is “affixed to various [physiological] structures within the ear.” See e.g. Column 5, lines 14 and 15. That is, absolutely no interface is contemplated between a transducer housing and a transducer mounting apparatus. Rather, Ball specifically teaches that:

“The transducer 100 must be connected substantially exclusively to the ossicles DD or the oval window EE.” (Emphasis added) Column 5, lines 27 and 28.

Applicant submits that not only does Ball fail to disclose or otherwise suggest the invention of Claim 1, but actually teaches away from such an arrangement.

In addition to the foregoing shortcomings of Metzler et al. and Ball, Applicant submits that such references cannot be properly combined to disclose or otherwise render obvious the invention of Claim 1. In this regard, and as noted above, each of the arrangements of Metzler et al. and Ball

actually teach away from Applicant's invention. Further, the respective teachings clearly teach away from any combination thereof, e.g. given the direct ossicular or oval window attachment requirements of Ball. Additionally, and in any case, even if Metzler and Ball were inappropriately combined, the resulting combination would not yield the invention of Claim 1 given the above-noted shortcomings of each.

In view of the foregoing, Applicant submits that Claim 1 is allowable over the art. Further, Applicant submits that dependent Claims 2-14 and 35 are allowable for the same reasons as independent Claim 1, and additionally since such claims present further combinative features not disclosed or otherwise rendered obvious by the prior art.

As to independent Claims 15 and 22, Applicant submits that such Claims are allowable over Metzler et al. and Ball for reasons at least partially analogous to those set forth in regard to independent Claim 1. Further, Applicant submits that Claims 16-21 and 36, and 23-35 and 37 dependent upon independent Claims 15 and 22, respectively, are allowable for corresponding

reasons, and further submits such Claims present further combinative features not disclosed or rendered obvious by the prior art.

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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